IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

R.S.A. No. 3580 of 2007(O&M)
Date of Decision : 30.10.2007

Meena Kumari

..... Appellant

Versus

Parmeshwari Devi & Ors.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.S.K. Garg Narwana, Advocate
for the appellant.

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VINOD K. SHARMA, J. (ORAL)

This regular second appeal has been filed against the judgments and decrees passed by the learned Courts below vide which suit filed by the plaintiff respondent No.1 for possession was ordered to be decreed.

The plaintiff respondent No.1 had brought a suit for possession on the plea that her husband Basant Lal was owner of Houses No. 262 and 265 Ward No. 4, Gurunanakpura Mohalla, Thanesar, District Kurukshetra, who constructed the house from his own pocket and it was self acquired property of Basant Lal. The property was said to have been inherited by the plaintiff respondent No.1 by virtue of Will dated 31.8.1973. It was claimed that Som Dutt son of the plaintiff and Basant Lal deceased were licensee in the property owned by Basant Lal and after the death of Som Dutt defendant came in possession in part of the property. It was also the case of the plaintiff that defendant No.1 gave possession of one room to defendant No.6 illegally. The possession was sought on the plea that licence in favour of the defendant appellant was revoked vide legal notice dated 23.3.1998.

The suit was contested by defendant appellant. A preliminary objection was taken that the suit was not maintainable on the plea that the property was ancestral in the hands of Basant Lal and, therefore, no Will could be executed qua the ancestral property. It was also claimed that the property was given to Som Dutt in a family settlement/partition as owner and not as licensee and since then the suit property was said to be in possession of Som Dutt and after his death defendants are in possession as owners. It was also claimed that defendant No.6 has no concern with the suit property nor was in possession of any part thereof. It was also claimed that possession of the defendants was not illegal nor unauthorised but as owners.

The learned Courts below have recorded a concurrent finding of fact that the property was not ancestral in the hands of Basant Lal and also came to the conclusion that the Will Ex.P1 stood duly proved under which the plaintiff respondent became owner of the property and, therefore, decreed the suit. The plea of family settlement/partition was disbelieved by the learned Courts below on the appreciation of evidence.

Mr. S.K. Garg Narwana, learned counsel appearing on behalf of the appellant challenged the findings recorded by the learned Courts below on the plea that the learned Courts below have failed to notice that the property in fact was ancestral in the hands of Basant Lal as the same was acquired in lieu of the claims of Bhagmal and for that purpose he sought to place reliance on Ex.DW5/A and the statement of the witness DW5 Udey Singh, Clerk of the department. This plea of the learned counsel for the appellant cannot be accepted as the property did not come to Basant Lal by way of inheritance rather the property was acquired by him and part

payment, though small amount, was paid by him.

Even otherwise the learned Courts below on appreciation of evidence have recorded a concurrent finding of fact that the property in the hands of Basant Lal was not ancestral.

Consequently, no question of law muchless substantial question of law arises for consideration in this regular second appeal.

Dismissed.

However, keeping in view that the appellant is a close relation of the plaintiff respondent and has been living in the house for sufficiently long time, she is granted six months time to hand over the vacant possession of the house in accordance with the decree passed by the learned Courts below.

30.10.2007 **(VINOD K. SHARMA)**
'sp' **JUDGE**